

CHAPTER 305

SHELLFISH CONSERVATION ORDINANCE

Town of Yarmouth, Maine

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SHELLFISH CONSERVATION ORDINANCE

ARTICLE I

A. TITLE

This ordinance is enacted in accordance with 12M.R.S.A. Section 6671 and shall be known and may be cited as the Municipal Shellfish Ordinance of the Towns of Yarmouth and North Yarmouth, Maine.

B. PURPOSE

The purpose of this Ordinance is to establish a shellfish conservation program for the Towns of Yarmouth/North Yarmouth which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- Licensing;
- Limiting the number of shellfish harvesters;
- Restricting the time and area where digging is permitted;
- Limiting the minimum size of clams taken;
- Limiting the amount of clams taken daily by a harvester.

C. DEFINITIONS

Resident: The term “resident” refers to a person who has been domiciled in this Municipality for at least three months next prior to the time his/her claim of such residence is made.

Non-resident: The word “non-resident” means anyone not qualified as a resident under this Ordinance.

Shellfish Clams: When used in the context of this Ordinance, the words “shellfish” and “clams” mean softshell clams, *Mya Arenaria*, and shall include both shell stock and shucked shellfish.

Municipality: Refers to Towns of Yarmouth/North Yarmouth, Maine

Lot: The word “lot” as used in this Ordinance means the total number of softshell clams in any bulk pile. Where softshell clams are in a box, barrel or other container, the contents of each box, barrel, or other container constitute a separate lot.

Possess: For the purpose of this Section, “possess” means dig, take, harvest, or hold in one’s custody or control, either personally or by another who is under one’s control.

ARTICLE II

A. LICENSES

A Municipal Shellfish Digging License is required, except for Depuration Harvesting authorized by the Commissioner of the Maine Department of Marine Resources pursuant to Title 12, M.R.S.A., Section 685. It is unlawful for any person to dig or take shellfish from the shores and flats of this Municipality without having a current license issued by this Municipality as provided by this Ordinance.

A Commercial Digger must also have a valid State of Maine Commercial Shellfish license issued by the Department of Marine Resources.

B. DESIGNATION, SCOPE, AND QUALIFICATIONS

Resident Commercial Shellfish License: The license is available to residents for the Towns of Yarmouth/North Yarmouth and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality and reciprocating municipalities consistent with the provisions of this Ordinance.

Non-resident Non-reciprocation Commercial Shellfish License: The license is available to non-residents of this Municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality.

Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this Municipality and entitles the holder to dig and take no more than one (1) peck of shellfish in any one (1) day for the use of himself/herself and his/her family. A person holding a resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Non-Resident Non-reciprocating Recreational Shellfish License: The license is available to any person not a resident of this Municipality and entitles the holder to dig and take not more than one (1) peck of shellfish in any one (1) day for the use of himself/herself and his/her family. A person holding a non-resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Three-day Recreational Shellfish License: This license is available for purchase for residents and non-residents. Each license shall authorize the holder to dig and take no more than one (1) peck of shellfish in any one (1) day for the use of himself/herself and his/her family. Such licenses shall expire after three days from the date of issue or the last calendar date on the month issued, whichever date is earlier. Such licenses shall be sold only the effective month as established by the Shellfish Conservation Commission and only up to the total number of licenses authorized for that month as established by the Shellfish Conservation Commission.

License must be signed: The licensee must sign the license to make it valid and harvesting authorities granted pursuant to any license shall no be transferable to any other person.

C. CONTENTS OF THE APPLICATION

Licensing administration and enforcement under this Ordinance shall be carried out by the Town of Yarmouth, Maine on behalf of the combined municipalities of the Towns of Yarmouth and North Yarmouth. Any person may apply to the Town Clerk of Yarmouth for the Licenses required by this ordinance on forms provided by the municipality.

D. FEES

The fees for the licenses are as stated below and must accompany in full the application for the respective license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, and enforcement.

Resident Commercial: \$200.00

Non-resident Non-reciprocating Commercial: \$400.00

Resident Recreational: \$20.00

Non-Resident Non-reciprocating Recreational: \$40.00

Gratuitous Senior Citizen license: This recreational license is issued free of charge to Yarmouth/North Yarmouth residents age 65 or over upon request.

Three-day Recreational license (pursuant to section II.B.5.): \$30.00

E. LICENSE EXPIRATION DATE

Each license issued under authority of this Ordinance expires at midnight on the 30th day of April next following the date of issue, except Three-day Recreational licenses which shall expire in accordance with Section II.E. of this Ordinance.

F. RECIPROCAL HARVESTING PRIVILEGES

Licensees from any other municipality cooperating with this Municipality on a joint shellfish management program may harvest shellfish according to the terms of their licenses.

ARTICLE III

A. LIMITATION OF DIGGERS

Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1. Prior to March 1, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the number of commercial and non-commercial licenses to be permitted.
2. The Shellfish Conservation Committee will notify the Town Clerk of Yarmouth in writing prior to April 1, of the number of licenses to be issued. No reservation will be accepted. Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper or combination of newspapers with general circulation which the municipal officers considered effective in reaching persons affected, not less than ten days prior the period, or periods, of issuance and shall be posted in the municipal offices until the period concludes.
 - (1) The Town Clerk shall issue commercial renewal and new licenses to residents and non-residents according to the number and type established by the Shellfish Conservation Commission.
 - (2) Renewal Commercial License: A renewal license may be purchased only in any municipal business day Between April 1, and April 15, annually. To be eligible to purchase a renewal license, a person must have been licensed for the previous year; must have completed eight (8) hours of conservation work as determined by the Shellfish Conservation Commission; and must not have lost eligibility to hold a license pursuant to the license revocation provisions of Section VI.B.4 hereunder. In the event that the number of qualifying renewal applications exceeds the number of available licenses, the Town Clerk shall conduct a limited lottery for the purpose of issuance of such renewal licenses as may be available. The lottery shall be limited to those qualified to hold a renewal license.

Of the eight (8) hours of conservation work one must complete for license renewal, at least four (4) hours of the conservation time must be used to do clam flat survey. If a survey is not needed in a particular year, license holders must still complete eight (8) hours of conservation time as determined by the Shellfish Commission. No person may perform conservation work as a surrogate for the applicant. The Shellfish Commission shall waive all or part of the requirement for conservation time for an applicant who provides the Commission with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled conservation time due to incapacitation by illness or injury. The Shellfish Commission may substitute other types of conservation work for the clam – survey work for those commercial harvesters age 60 and over. Any commercial harvester who removes clams from the flats for personal use or sale while engaged in conservation work will not receive credit for that conservation work.

- (a) The Shellfish Conservation Commission shall waive all or part of the requirement for conservation time for an applicant who provides the Commission with a written statement from a physician indicating that the

applicant was not able to participate in any regularly scheduled conservation time due to incapacitation by illness or injury. At the request of an applicant, made at regular monthly meeting of the Commission, the Commission may arrange on an hour-for-hour basis:

- (i) Another time to complete conservation work for an applicant who demonstrates to the Commission that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time: or
 - (ii) Alternate less strenuous work for an applicant who provides the Commission with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.
3. Beginning on the first business day of May the Town Clerk of Yarmouth shall issue resident recreational licenses to residents until July 31, after which recreational licenses shall be issued to residents and non-residents on a lottery basis to be established by the Town Clerk.
 4. Beginning on the first business day in May, the Town Clerk of Yarmouth shall issue new Commercial Licenses on a lottery basis. The Town Clerk, with the consent of the Shellfish Conservation Commission, shall establish rules and procedures of the conduct of the lottery, and shall establish rules and procedures for the conduct of the lottery, and shall post notice of the availability of commercial licenses, if any, and the procedures for lottery participation. If, for any reason, the Shellfish Conservation Commission with the approval of the Maine Department of Marine Resources determines that additional commercial harvesting licenses may be issued subsequent to the original lottery, a supplemental lottery may be conducted. Supplemental lottery procedures shall allow all original lottery participants not selected to be automatically re-entered into the lottery pool. In the event that additional licenses become available subsequent to the original lottery, and all original lottery participants have been issued a license under the original or supplemental lottery(ies), the Town Clerk shall post notice for a new lottery generally in accordance with the rules and procedures for the original lottery.
 5. Notwithstanding ARTICLE III.A.1.d., in the event that any commercial licenses issued become void due to the death, change of residency, voluntary return by the licensee, or revocation pursuant to Article VI.B.4., the Town Clerk shall conduct a supplemental lottery for the re-issuance of such license(s) only upon the positive determination by the Shellfish Conservation Commission that re-issuance of such licenses shall be consistent with the goal of sustainable resource management. Absent such a positive determination, the total number of authorized available licenses shall be reduced through attrition.

6. Any person who is issued a Commercial Shellfish License by the Maine Department of Marine Resources will not be eligible for issuance of a Yarmouth Recreational Shellfish License.
7. Any person who is issued a Yarmouth Recreational License and subsequently obtains a Commercial Shellfish license from either the Maine Department of Marine Resources or the Town of Yarmouth will have his/her Yarmouth recreational license revoked immediately.

B. ALTERNATIVE LICENSING PROCEDURES

In the event that the Shellfish Conservation Commission shall establish that no limit on non-commercial licenses shall be imposed, the following procedure shall govern the issuance of licenses notwithstanding the provisions of Article III (A) (1)(c).

1. Beginning on the 20th day of April, the Town Clerk of Yarmouth shall issue resident recreational licenses to residents upon application, said licenses to be effective May 1.
2. Beginning on the 20th day of April, the Town Clerk shall issue, by lottery, non-resident non-commercial licenses to be effective May 1 as follows:
 - a. The Town Clerk shall establish a waiting list by lottery for all non-resident applicants and shall issue licenses for not less than ten (10) non-resident applicants or all non-resident applicants whichever is less.
 - b. Whenever the Town Clerk shall issue any increment of 9, or part thereof, resident non-commercial licenses in excess of 90, the Clerk shall issue one additional non-resident non-commercial license to a non-resident on the waiting list, if any.
 - c. Any non-resident may enter his/her name after April 1 for the waiting list lottery to be held on April 20 (or, if April 20 is not a regular business day, the next business day thereafter.) Any person may apply to be added to the waiting list at any time thereafter. The Town Clerk shall post all names on the waiting list.
 - d. Any person notified by the Town Clerk that he/she has been selected from the waiting list and is qualified to apply for a non-resident, non-commercial license, shall make an application to the Town Clerk and pay the applicable license fee within fourteen (14) business days of the mailing of said notice of eligibility.

In the event that the person fails to make application, qualify, or pay the license fee within the prescribed time period, he/she shall be returned to the end of the waiting list.

- e. Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:
 - 1.) Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the commissioner of Marine Resources.
 - 2.) For each commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident licenses issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every ten additional resident licenses issued.
- 3. Commercial and Senior citizen licenses issued shall not be counted in the calculation of licenses sold under this section.

ARTICLE IV

A. OPENING AND CLOSING OF FLATS

The Shellfish Conservation Commission, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest and designate areas and period for commercial or recreational harvesting thereon. Upon concurrence of the Department of Marine Resources area biologist that the status of the shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed for either recreational or commercial harvesting, the Shellfish Conservation Commission may call a public hearing on ten day's notice published in a newspaper having general circulation in the Town, stating the time, place, and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Shellfish Conservation Commission made after the hearing shall be based on findings of fact.

B. MINIMUM LEGAL SIZE OF SOFTSHELL CLAMS

Pursuant to 12 M.R.S.A., Section 6671 and 6681 as amended from time to time, it is unlawful for any person to possess softshell clams within the Town of Yarmouth, Cumberland County, which are less than two (2) inches in the longest diameter except as provided by Section of this ARTICLE IV.

The possession of more than one (1) peck of clams by anyone not possessing both a valid State Commercial Clam license and Town of Yarmouth Commercial license shall constitute a violation of this Ordinance. Upon conviction of such violation in any court of competent jurisdiction, the Town Clerk shall suspend the license of such violator pursuant to ARTICLE VI.B.4. of this Ordinance. Such suspension shall be in addition to any penalties or fines imposed by the court.

C. METHOD OF DETERMINING TOLERANCE

Any licensed person may possess softshell clams that are less than two (2) inches if, beginning on the effective date of this Ordinance, they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck, no more than four (4) pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.

D. NO NIGHT HARVESTING

It is illegal for any person to harvest shellfish from the shores or flats of the Town of Yarmouth at night. For the purpose of this Section, the term night shall mean that period of time from one-half after sunset until one-half hour before sunrise of the immediately following day.

E. NO HARVESTING FROM CLOSED AREAS

It is illegal for any person to harvest shellfish from any areas of the shores or flats of the Town of Yarmouth if such area has been declared closed by the Municipal Officers for conservation purposes, or by the Department of marine Resources for pollution/sanitation purposes.

ARTICLE V

A. SHELLFISH CONSERVATION COMMISSION

The Shellfish Conservation program for the Town of Yarmouth/North Yarmouth will be administered by the Shellfish Conservation Committee consisting of six (6) members. There will also be four (4) associate members. These members will be appointed, one half by the Town Council of Yarmouth and one half by the Selectmen of North Yarmouth.

The Yarmouth Town Council and the north Yarmouth Board of Selectmen shall each appoint five members, (3 members and 2 associate members) who shall serve staggered three-year terms. In the first year, two members from each town shall serve a three-year term each, two members from each town shall serve a two year term each, and one member from each town shall serve a one-year term. In the first

year, one Associate Member from each town shall serve a three year term and one associate member shall serve 3 year-terms each.

The Clam Warden shall serve as an ex-officio member of the Commission and shall have no vote.

The Commission shall elect annually from its members a chairman, vice chairman, secretary and such other officers as the Commission shall determine necessary and expedient. There shall be no requirement or condition that election of Commission officers shall be based on residency, term, tenure, or licensing status, except that associate members shall not hold the office of Chairman or Vice Chairman. Elections shall be held between March 1 and April 30 annually.

Votes/Quorum: All final votes of the commission shall require the affirmative vote of a majority of those members and associate members present and voting provided a quorum is present. A quorum shall be deemed present if a minimum of six (6) members or associate members are present with no less than two (2) representatives from each community. A quorum shall be required for the transaction of all business except that a smaller number can adjourn to another time.

Duty of Officers: The chairman shall cause an agenda to be circulated to each member and to the Town Clerk of each municipality at least 7 days prior to each regularly scheduled meeting, and as soon as practical, for each special meeting or continued meeting. The agenda shall indicate the date, time and place of the meeting and the nature of the business to be considered. The agenda may be amended by simple majority vote.

Chairman: the Chairman shall preside at all meetings of the Commission and shall notify the Town Clerk of each town of all actions, votes, and recommendations which shall require approval of the Yarmouth Town Council and/or North Yarmouth Board of Selectmen.

Vice Chairman: The Vice Chairman shall serve in the absence or disability of the Chairman.

Secretary: The Secretary shall maintain a record of all meetings and shall preserve and maintain records of reports, files, studies, and surveys and similar materials of the Commission, and shall make such materials available for public inspection and copying. This duty may be discharged by maintaining copies of all such materials and records with the Yarmouth Town Clerk.

B. THE COMMITTEE'S RESPONSIBILITIES INCLUDE

Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.

Surveying the clam flats to maintain current information on shellfish resources.

Submitting to the Board of Selectmen and/or Town Council proposals for the expenditures of funds for the purpose of shellfish conservation.

Keeping this Ordinance under review and making recommendations for its amendments.

Securing and maintaining records of all shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.

Recommending conservation closures and opening to the Board of Selectmen and/or Town Council in conjunction with the area biologists of the Department of Marine Resources.

Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other committee activities.

Conducting appeal hearings pursuant to Section of this Ordinance and making findings and issuing orders thereunder.

Any person aggrieved by the decision of the Shellfish Conservation Commission may appeal to the Superior Court within 30 days from the receipt of the written decision of the Commission; such appeal shall be considered pursuant to Rule 80B of the Maine Rules of Civil Procedure.

ARTICLE VI

A. PENALTIES

A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671.

B. SUSPENSION

Violation of Shellfish Ordinance:

First Conviction:

The Town Clerk shall immediately suspend for thirty (30) days any license issued pursuant to this ordinance upon notice by the licensee, Clam Warden, court, or Police Chief that the licensee has been convicted in any court of competent jurisdiction of any violation of this ordinance. Such suspension shall begin on the date of conviction and run thirty (30) consecutive days.

Second Conviction:

The Town Clerk shall immediately suspend for one hundred eighty (180) days any license issued pursuant to this ordinance upon notice by the licensee, Clam Warden,

court, or Police Chief that the licensee has been convicted, within the same license year, for a second violation of this ordinance in any court of competent jurisdiction.

Third and Additional Convictions:

Two to Five Years Following Second Conviction:

The Town Clerk shall immediately suspend for one (1) year any license issued pursuant to this ordinance upon notice by licensee, Clam Warden, court, or Police Chief that the licensee has been convicted of a third or additional violation of this ordinance in any court of competent jurisdiction, within five (5) years but more than two (2) years after the date of the second conviction.

For the purpose of this section, an additional violation or violations may arise out of the same set of facts as the original violation or violations. For the purposes of this section, a license year shall be the twelve (12) month period ending April 30th, annually.

C. EFFECTIVE DATE

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of this Ordinance is filed with the Commissioner within twenty (20) days of its adoption.

D. SEPARABILITY

If any Section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

E. REPEAL

Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which is inconsistent with this Ordinance is hereby repealed.

F. HEARINGS AND APPEALS

Any licensee whose Shellfish license has been suspended shall be entitled to a fair hearing before the Shellfish Conservation Commission, if such person shall have filed a written request for such hearing within 30 days of the effective date of the suspension or receipt of actual notice from the Town Clerk of such suspension, whichever comes first. Upon receipt of a request for a hearing, the Chairman of the conservation Commission shall schedule a hearing before the Commission within 30 business days, but not sooner than 7 business days, and shall give the appellant written notice of the time, place and date of such hearing. Time limits may be waived by mutual consent of the Chairman and the appellant.